

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

In the Matter of:

SHARIS A.,

Claimant,

vs.

FRANK D. LANTERMAN REGIONAL  
CENTER,

Service Agency.

OAH No. L 2006080721

**DECISION**

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on October 20, 2006.

Marc Baca, Appeals Coordinator, represented Frank D. Lanterman Regional Center (Service Agency or FDLRC).

Sharis A. (Claimant), who was not present, was represented by Rima H., her mother, who was assisted by a Farsi interpreter.

The parties presented oral and documentary evidence, and submitted the matter for decision on October 20, 2006.

**ISSUES**

1. Should the Service Agency be required to continue to provide respite services at the current level of 16 hours per month?
2. Should the Service Agency be required to increase the number of respite hours currently provided?

## FACTUAL FINDINGS

1. Claimant is 23 years old and receives services provided by the Service Agency based on a disabling condition of mild mental retardation, with a diagnosis of Down's syndrome. Since November 2001, the Service Agency has funded 16 hours per month of respite services, which Claimant's mother would like to be continued at the same level, or increased. The Service Agency seeks to discontinue respite services because the original purpose for granting these services no longer applies.

2. In 2001, Claimant's father had surgery for oral cavity cancer, followed by a series of chemotherapy and radiation treatments. His condition required Claimant's mother to transport him to many medical appointments, which often consumed the better part of the day. Claimant's mother requested and received 16 hours per month of respite so that Claimant would not be left alone at home during those times when mother and father were attending the medical visits. The respite services initially were scheduled to occur over a six-month period, but were extended after the initial period ended.

3. In Claimant's November 9, 2004 Individual Program Plan (IPP), it states that, "Parents also receive 16 hrs/month of respite provided by Accredited Nursing Care, since consumer's father is undergoing chemotherapy, and mother has to accompany him, and can not leave [Claimant] alone for long periods of time." An amendment to the IPP dated April 2005 stated that "Accredited" will continue providing 16 hours per month of respite from May 1, 2005, through April 30, 2006, "[t]o assist family with supervision, to be able to live in the least restrictive environment."

4. In approximately March 2006, the Service Agency initiated an inquiry as to the continuing need for respite services. The Service Agency's service coordinator spoke to Claimant's mother by telephone and requested her to provide documentation regarding the father's ongoing medical visits. An amendment to the IPP dated April 2006 stated that 16 hours would be funded through July 31, 2006, after which respite services would be terminated. A second amendment dated July 23, 2006, extended the funding through August 31, 2006. At the administrative hearing, the Service Agency represented that it was continuing to provide respite services through December 31, 2006.

5. At the administrative hearing, Claimant's mother provided the following:

- a. A note from the family doctor indicating Claimant needed assistance with daily living and other self-help skills;
- b. A letter from the father's 2001 surgeon, Dr. Osborne, indicating that the father received monthly follow-up examinations;
- c. A note from an oncologist, Dr. Lee, indicating the father was seen for a follow-up examination and evaluation on October 3, 2006, with a diagnosis of oral cavity cancer status post surgery and radiation treatment;

d. An appointment record of a surgeon at UCLA Healthcare, Dr. Head, who saw the father on October 16, 2006; and

e. Calendar pages for the months of September and October, 2006, which contain handwritten notations indicating that the father went to three medical appointments in September, and five in October, with one more scheduled with Dr. Head for October 23, 2006.

6. Claimant currently attends a three-hour work program from 8:00 a.m. to 11:00 a.m. and a day program from 11:00 a.m. to 3:30 p.m. each weekday. Her sister provides her transportation to and from these programs. The Service Agency funds 12 hours per month of Personal Assistance Services (PAS), which are support services to build on and maintain skills acquired through prior training. Claimant also receives approximately 50 hours per month of state-funded In-Home Supportive Services (IHSS), which provides personal care assistance to disabled clients, and includes laundry, shopping, and cleaning. Claimant currently does not receive any “supervision” hours through IHSS.

7. The Service Agency asserted, among other things, that the father’s medical appointments can be scheduled in the mornings, while Claimant is working or attending her day program. It maintained that Claimant is able to stay at home by herself for short periods of time, although it has made no formal assessment of Claimant’s abilities in this regard. The Service Agency asserted that Claimant’s sister, a young adult who has been willing to watch Claimant at various times without compensation, is an appropriate resource for the mother to rely upon rather than burden the Service Agency for services.

8. Claimant’s mother responded to the Service Agency’s assertions at the administrative hearing. She testified that the sister has performed respite services by taking Claimant out for lunch, or to the movies; however, the sister is preparing to enter college, after which, she will not be available to watch Claimant. Claimant’s mother said she has tried to schedule the father’s doctors’ visits in the mornings, but that she takes afternoon appointments when they are offered, as well. She is very concerned about leaving Claimant at home by herself. She believes Claimant is unable to dial 911 in an emergency. Also, Claimant has a tendency to answer the door when she hears the doorbell, without thinking about safety issues.

9. In addition, the Service Agency suggested that IHSS can perform an assessment and offer to provide “supervision” services, which would allow Claimant’s mother to take a break from the demanding responsibility of caring for her daughter. The Service Agency maintains that this is a generic resource which must be utilized before the Service Agency can provide respite hours for this purpose. The Service Agency is willing to provide advocacy assistance to Claimant’s mother to obtain these supervision services through IHSS. It should be noted that the Service Agency has not assessed the needs of the family for this type of respite, and that the Service Agency appears to have agreed to provide such services in the April 2005 amendment to the IPP. It should also

be noted that, if Claimant needs a supervised environment, it is likely the need for respite services will increase as Claimant's parents become older (they are in their mid-60s).

## LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, Welfare and Institutions Code<sup>1</sup> section 4500 et seq., the Legislature codified the state's responsibility to provide for the needs of developmentally disabled individuals and their families and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)

2. The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing individual program plans, taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.) The consumer, or the consumer's representative, and the Service Agency jointly work out the IPP statement of goals and objectives, including a schedule of the type and amount of services and supports to be purchased in order to achieve these goals and objectives.

3. Under section 4690.2, subdivision (a), "in-home respite services" means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member. Under this statute, respite services are designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client's basic self-help needs and other activities of daily living, including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

4. A service agency seeking to change a service previously approved for a claimant has the burden to demonstrate its decision is correct. This is true even though the service agency is authorized to periodically review the services and supports it provides and conduct assessments to determine whether adjustments are needed. The Service Agency claims that the respite hours previously agreed upon were meant to address a specific need

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<sup>1</sup> All further references are to the Welfare and Institutions Code, unless specified otherwise.

on a temporary basis and that the Service Agency need not continue to provide the same level of services.<sup>2</sup>

While this was initially true, respite has also been provided past the acute stage of the father's illness and, as stated in the April 2005 amendment to the IPP, has also been provided to allow respite in more general terms. In any event, Claimant's father's medical condition, while stable for a number of years, does not appear to be improving. Further, whereas Claimant's daily living and self-help skills have improved in recent years, her need for supervision does not appear to have diminished. Claimant's needs continue to fall within the parameters described in section 4690.2, subdivision (a). In these circumstances, the Service Agency has failed to establish that Claimant does not need the level of in home respite services she has been receiving.

5. Since there has been no evaluation of the amount of in home respite services that Claimant's family currently needs, Claimant has not established that an increase in respite hours beyond 16 hours per month is warranted at this time.

#### ORDER

Claimant's appeal is sustained. The Service Agency shall maintain the level of in home respite services at 16 hours per month, as currently provided to Claimant and Claimant's mother.

Dated: \_\_\_\_\_

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MARK E. HARMAN  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.

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<sup>2</sup> The Service Agency's policies notwithstanding, the Service Agency has not formally assessed Claimant's family's needs for respite services other than the "emergency" of the father's ongoing medical attention and treatment, as stated in the 2004 IPP.